IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 30 of 2006 (S/S)

Mukesh Joshi
S/o Sri Parmanand Joshi
R/o H. No. 85, Khanna Nagar,
Jwalapur, Haridwar.

……. Petitioner

Versus

1. State of Uttaranchal.
   through Secretary (Awas)
   Civil Secretariat, Dehradun.
2. Haridwar Devlopment Authority,
   Haridwar
   Through its Vice Chairman.
3. Secretary
   Haridwar Development Authority,
   Haridwar.

…….. Respondents

Mr. Kamlesh Tiwari, Advocate holding brief of Mr. Pankaj Miglani, learned counsel for the petitioner.
Ms. Puja Banga, Advocate instructed by Mr. S. Dhulia, Senior Advocate, for respondent Nos. 2 and 3.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2) Learned counsel for the petitioner argued that, though, the petitioner has sought his regularization in service by means of this petition, but he was a regularly appointed Chowkidar, before he was removed from the service, and got himself reinstated after challenging the same before the Labour Court. Learned counsel for the petitioner further contended that the reinstatement of the

petitioner on daily wages is illegal and his services should have been regularised.

3) However, learned counsel for the petitioner failed to show any letter of appointment showing that the petitioner was a regularly appointed Class IV employee. He even failed to show that under which selection process he got selected. As against this, in the counter affidavit filed on behalf of respondent No 1, the Principal Secretary (Housing), State of Uttaranchal, has stated that there is no post of Chowkidar vacant in the Haridwar Development Authority. He has further stated that the petitioner was actually engaged on daily wages on 17.08.1991, with said Authority, for a particular Scheme known as 'SHIVLOK HOUSING SCHEME'. A preliminary objection has also been raised in the counter affidavit stating that the petitioner has no right of permanent employment in view of the Apex court's decision in ***Secretary State of Karnataka Vs. Uma Devi, reported in AIR 2006 SC Page 1806.***

4) Learned counsel for the petitioner drew attention of this Court to the judgment and order dated 30.08.2005, passed in Writ Petition No. 3113 (M/S) of 2001, whereby the Labour Court's award dated 18.03.1996, is affirmed. However, in view of the principle of law laid down in ***Secretary State of Karnataka Vs. Uma Devi, reported in (2006) 4 Supreme Court Cases Page 01,*** that daily wage workers and the persons employed without undergoing regular selection process under the rules, should not be permitted to be absorbed or regularized in the service, against the Constitutional Scheme of public employment,

this Court is not inclined to issue direction to regularise services of the petitioner.

5) The writ petition is dismissed. Interim order dated 12.01.2006, stands vacated. (All pending applications in this petition also stand disposed of).

(Prafulla C. Pant, J)

Dt.: November 29, 2006
H.Negi